

August 18, 2011



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

August 17, 2011

Audit Report No. 2010 – GV003

Candidate: Patrick K. McGowan

Gubernatorial Candidate – 2010 Primary Election

Background

Patrick K. McGowan was a candidate for Governor of the State of Maine in the 2010 Democratic primary election.

Mr. McGowan was certified by the Commission on Governmental Ethics and Election Practices (Commission) as a Maine Clean Election Act (MCEA) candidate on April 7, 2010. MCEA candidates are required under the Act to submit reports of the following activities: contributions made to their campaigns; campaign expenditures; outstanding campaign debt; and acquisitions and subsequent disposition of campaign equipment. Such reports are made for specified periods during the election cycle. Contributions and expenditures reported by the McGowan Campaign and listed in the following reports were included in the audit examination:

- 2010 Seed Money
- 2010 42 Day Pre-Primary
- 2010 Eleven Day Pre-Primary
- 2010 42 Day Post-Primary

Audit Scope and Process

The McGowan Campaign generated contributions and expenditures in the following amounts:

FINANCIAL ELEMENT	AMOUNT
Seed Money Contributions	\$76,367
MCEA Funding	\$599,998
Other Cash Receipts	\$0
Disbursements	\$670,834

The Commission staff validated more than \$40,000 of Seed Money contributions from registered Maine voters. The MCEA requires that candidates for Governor who seek to qualify for "Clean Election" funding must collect a minimum of \$40,000 in Seed Money contributions from registered Maine voters.

In addition, the Commission Auditor performed verification tests on out-of-state contributions made by check and through online processing services.

The Auditor also verified supporting documentation for \$514,495 or about 77 percent of total campaign expenditures. The verification process involved making random selections of expenditure transactions from different reporting periods and ranging in value, and tracing the transactions to source documentation, i.e., vendor invoices, receipts, and contracts. Source documents were then matched to payment records, e.g., cancelled checks, wire transfers.

It should be noted that the McGowan Campaign spent \$366,764 on radio and television advertising, or about 55 percent of total expenditures went to purchases of broadcast media services. The Auditor verified documentary support for 100 percent of all media expenditures.

The audit disclosed no purchases of equipment by the McGowan Campaign that were paid for with MCEA funds.

Findings and Recommendations

Finding No. 1 – Misreported Seed Money Contributions and Seed Money Expenditures in Excess of Total Contributions

The McGowan campaign reported total contributions of \$78,415 on their 42 Day Post-Primary report, the final financial report submitted to the Commission by the candidate. Subsequently, in a post-election review of campaign finances conducted by the campaign treasurer in connection with this audit, it was determined that the campaign had reported \$2,048 in excess of the contributions actually received. The error was self-disclosed by the campaign and appears to have been inadvertent; however, it resulted in expenditures in excess of permitted amounts to be made during the qualifying period.

The election law limits the amount of qualifying (Seed Money) period expenditures to the amount of total contributions received by the candidate. As indicated above, the McGowan Campaign over-estimated their Seed Money contributions and made expenditures matching what they thought were the amount of contributions received. In fact, McGowan campaign expenditures exceeded total contributions by \$1,599. As mentioned above, the Campaign Treasurer reported the error to the Commission after he discovered the reporting discrepancy during an internal review of campaign documentation connected with the audit.

The two errors – over-reporting Seed Money campaign contributions, and excess expenditure of Seed Money funds – caused the following:

- Contributions were understated, and payments in excess of contributions were made, with the result that the candidate's Seed Money Report was inaccurate, and the public and other candidates were denied timely information concerning Mr. McGowan's qualification for "Clean Election" funding.
- The basis for disbursing MCEA funds to the McGowan Campaign was compromised in that the misstatement of total Seed Money contributions received by and expenditures made by the Campaign altered the amount of funding provided to the candidate.
- Certain expenditures made during the Seed Money period ultimately were paid for with Maine Clean Election Act funds and not with Seed Money as required by law.

Standard – 21-A M.R.S.A. § 1125 (12) states that "Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission." 21-A M.R.S.A. § 1125(2-A)(A) states that "All goods and services received prior to certification must be paid for with seed money contributions It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification."

Recommendation – the Commission staff recommends that the Commission:

- find that the McGowan campaign violated 21-A M.R.S.A. § 1125 (12) by failing to accurately report contributions made to the campaign during the qualifying period, and by making expenditures in excess of the allowable maximum; and
- find that the McGowan campaign violated 21-A M.R.S.A. § 1125(2-A)(A) by using MCEA funds to pay for services received prior to the candidate's certification as an MCEA candidate; and
- assess a penalty of \$200 for the violations under 21-A M.R.S.A. § 1127(1).

Finding No. 2 – Unreported Campaign Expenditures

The McGowan Campaign overlooked nine small expenditures totaling \$285.83

When they prepared and submitted their 11 Day Pre-Primary campaign finance report. The campaign treasurer discovered the error during his post-election internal review, and reported it to the Commission.

Standard - 21-A M.R.S.A. §1125(12) states in part that “participating and certified candidates shall report ... all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission.”

- find that the McGowan campaign violated 21-A M.R.S.A. § 1125(12) by inaccurately reporting expenditures;
- assess a penalty of \$ 100 under 21-A M.R.S.A. § 1127(1) for this violation;

Administrative Issues

The McGowan Campaign determined, as a result of the audit, that the following adjustments to their campaign finance reports should be made:

- A. Expenditures (mostly payments for radio and television advertising) in the amount of \$64,444 which were reported in the 11 Day Pre-Primary period should be transferred into the 42 Day Post-Primary reporting period.
- B. Adjustments related to media expenditures and certain minor post-election expenditures totaling \$60,065 not previously reported should be classified as 42 Day Post-Primary transactions.

The activities discussed in A and B relate primarily to timing differences, and do not rise to the standard of violations of the Act or Commission rules. All campaign reports have been amended as necessary.

Auditor's Note

As previously indicated, the McGowan Campaign spent over \$366,000 on radio and television advertising. Most of these expenditures were placed through third party media buyers. At the audit's inception, the campaign did not have detailed documentation available to support their reported payments for television and radio advertising. It was necessary, therefore, for the campaign to work with their

media buyers to obtain copies of invoices issued by media outlets, and cancelled checks issued in payment for media services. An important outcome of this verification exercise was that the Campaign recovered \$7,348 in refunds due from media outlets and their media buyers that otherwise might not have been collected and returned to the Clean Election Fund.

In the process of auditing gubernatorial and other candidates who have made large scale media expenditures, the Auditor has found instances where refunds owed to campaigns have not been tracked and automatically returned to the Commission. There appear to be several reasons:

- The Maine Clean Election Act and related Commission rules are somewhat vague relating to procedures, obligations, and accountability regarding issues of media expenditures and refunds, and may not provide sufficient guidance to candidates and treasurers.
- Radio and television advertising costs are prepaid by the candidate. Media invoices are not generated contemporaneously with expenditures, and most of the time, campaign treasurers are not aware that refunds for services not provided, i.e., radio and television spots not run, may be due from media outlets and media buyers.
- Once campaigns have terminated, there is usually no one available to pursue documentation and refund issues.


The Commission may want to consider directing the Commission staff to draft expansions of Commission rules that apply to media purchases and related documentation and refund recovery requirements for their consideration.

Candidate's Comments on the Report

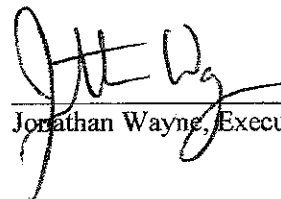
Patrick McGowan did not submit written comments on the findings and recommendations contained in this report. The Commission staff anticipates receiving comments from Mr. McGowan at the August 18, 2011 Commission meeting.

Respectfully submitted to the Members of the Commission,

Approved:



Vincent W. Dinan
Commission Auditor



Jonathan Wayne, Executive Director